

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LINDA BENTHALL**  
*Plaintiff,*

**VS.**

**STATE FARM FIRE AND CASUALTY  
COMPANY**  
*Defendant*

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**C. A. NO. \_\_\_\_\_**  
**JURY**

**DEFENDANT STATE FARM LLOYDS' NOTICE OF REMOVAL**

Defendant State Farm Lloyds files this Notice of Removal.

**I. PROCEDURAL BACKGROUND**

1. Plaintiff Linda Benthall (Plaintiff) filed this action on November 21, 2014 against State Farm Fire and Casualty Insurance Company in the 133<sup>rd</sup> Judicial District Court of Harris County, Texas.<sup>1</sup> That case was docketed under cause number 2014-68513.

2. On August 21, 2015, Plaintiff filed her First Amended Original Petition.<sup>2</sup> Plaintiffs named State Farm Lloyds as a Defendant<sup>3</sup> and nonsuited State Farm Fire and Casualty Insurance Company.<sup>4</sup> State Farm Lloyds' attorney accepted service of the First Amended Original Petition on State Farm Lloyds' behalf. State Farm Lloyds filed its Original Answer and Special Exceptions on September 11, 2015.<sup>5</sup>

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<sup>1</sup> See Ex. A-2, Pl.'s Org. Pet.

<sup>2</sup> See Ex. A-6, Pl.'s First Am. Org. Pet.

<sup>3</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at para 3.

<sup>4</sup> See Ex. A -6, Pl.'s First Am. Org. Pet. Plaintiff omitted State Farm Fire and Casualty Insurance Company from the First Am. Org. Pet. As a general rule, omitting a party from an amended petition indicates an intent to nonsuit that party. See *American Petrofina, Inc. v. Allen*, 887 S.W.2d 829, 831 (Tex. 1994); *Webb v. Jorns*, 488 S.W.2d 407, 409 (Tex. 1972) (citations omitted); *Randolph v. Jackson Walker L.L.P.*, 29 S.W.3d 271, 274 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2000, pet. denied) (citations omitted). See also *Green v. Vidlak*, 76 S.W.3d 117, 119-20 (Tex. App.—Amarillo 2002, no pet.) (even though defendant was listed in style of amended petition, omission of defendant's name from text of amended petition was a nonsuit).

<sup>5</sup> See Ex. A-7, State Farm Lloyds' Org. Answer.

3. Plaintiffs' lawsuit against State Farm Lloyds shall hereinafter be referred to as "the State Court Action".

4. State Farm Lloyds files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the 133<sup>rd</sup> Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Dallas Division.

## **II. NATURE OF THE SUIT**

5. Plaintiff filed this lawsuit based on an insurance claim for a fire that damaged her home on March 7, 2014 (the Fire).

6. Plaintiff seeks a declaratory judgment that she is entitled to coverage for the Fire under the homeowners' policy under which she filed this lawsuit. <sup>6</sup> Plaintiff also asserts causes of action against State Farm Lloyds for: (a) alleged breach of the insurance contract;<sup>7</sup> (b) alleged breach of the duty of good faith and fair dealing;<sup>8</sup> (c) alleged violations of the Texas Insurance Code;<sup>9</sup> and (d) alleged violations of the Texas Deceptive Trade Practices Act.<sup>10</sup>

## **III. BASIS FOR REMOVAL**

7. The Court has jurisdiction over this action under 28 U.S.C. §1332 because there is and was complete diversity between all parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

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<sup>6</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at paras. 8.

<sup>7</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at paras. 12-14.

<sup>8</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at paras. 9.

<sup>9</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at paras. 10.

<sup>10</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at paras. 11.

### **A. Diversity of the Parties**

8. Removal is proper because there is and was complete diversity between the properly joined parties under 28 U.S.C. §1332 both at the time of the filing of Plaintiff's First Amended Original Petition and at the time of its removal to this Court.

9. Plaintiff was, at the time of filing this lawsuit, and still is, a citizen of either Harris County, Texas or Matagorda County, Texas and resides in Harris County.<sup>11</sup>

10. State Farm Lloyds was at the time this action was commenced, and still is, a citizen of Illinois. State Farm Lloyds is a "Lloyd's Plan" organized under Chapter 941 of the Texas Insurance Code. It consists of an unincorporated association of underwriters who were at the time this action was commenced, and still are, all citizens and residents of Illinois. thereby making State Farm Lloyds a citizen of Illinois for diversity purposes.<sup>12</sup>

11. Consequently, State Farm Lloyds may remove this action pursuant to 28 U.S.C. §1441 because complete diversity of citizenship exists.

### **B. Amount in Controversy**

12. The value of the matter in controversy exceeds \$75,000.00, exclusive of interest and costs. Pursuant to Plaintiff's First Amended Original Petition, Plaintiff is seeking "monetary relief of \$200,000.00 to \$1 million."<sup>13</sup>

13. Accordingly, the amount in controversy, exclusive of interest and costs is in excess of \$75,000.00, the requirement of 28 U.S.C. §1332(a).

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<sup>11</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at para. 3.

<sup>12</sup> See *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated association determined by citizenship of members).

<sup>13</sup> See Ex. A-6, Pl.'s First Am. Org. Pet. at para. 4.

#### **IV. REMOVAL IS PROCEDURALLY CORRECT**

##### **A. State Farm Lloyds Notice of Removal is Timely Filed**

14. Pursuant to 28 U.S.C. §1446(b)(3), State Farm Lloyds files this Notice of Removal within thirty days after service to State Farm Lloyds of an amended pleading which first showed the State Court Action to be removable.

15. The State Court Action was filed on November 11, 2014. However, at the time it was filed, State Farm Lloyds was not a party to the lawsuit. State Farm Lloyds was not added as a party to the lawsuit until August 21, 2015.

16. Therefore, this notice of removal is timely filed before the expiration of 30 days following the receipt of Plaintiffs' First Amended Original Petition naming State Farm Lloyds as a defendant.

##### **B. State Farm Lloyds' Notice of Removal Complies With All Other Procedural Requirements**

17. Venue is proper in this division under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

18. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon State Farm Lloyds in the State Court Action are attached to this notice.<sup>14</sup> Additionally, all documents required by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit A.

19. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will promptly be given to all parties and to the clerk of the 133<sup>rd</sup> Judicial District Court of Harris County, Texas.

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<sup>14</sup> See Ex. A attached hereto.

### **JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, State Farm Lloyds demands a trial by jury.

### **PRAYER**

State Farm Lloyds respectfully requests that the State Court Action be removed and placed on this Court's docket for further proceedings. State Farm Lloyds also requests any additional relief to which it may be entitled.

Respectfully submitted,

By /s/ Kathleen Crouch

Kathleen Crouch  
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**CERTIFICATE OF SERVICE**

I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by FED.R.Civ.P. 5(b)(2) on this 17<sup>th</sup> day of September, 2015, as indicated below:

Jim L. Culpepper & Associates, P.C.  
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**VIA FACSIMILE: (713) 463-6301 &  
CERTIFIED MAIL/RRR #715 1520 0003 3801 6565**

**/s/Kathleen Crouch**

Kathleen Crouch